

Minutes HEARING OFFICER APRIL 6, 2010

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

David Williams, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner
Diana Kaminiski, Senior Planner
Shawn Daffara, Planner II
Michele Lorange, Building Code Inspector
Jeff Tamulevich, Code Compliance Administrator

Number of Interested Citizens Present: 15

Meeting convened at 1:30 PM and was called to order by Mr. Williams. He noted that anyone wishing to appeal a decision made today by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days by April 20, 2010 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for March 16, 2010.

2. Mr. Williams noted that the following case(s) had been removed from this agenda:

- Request by **RIO SALADO CENTER - TEEN DANCE CLUB (PL100060)** (Thomas George, applicant; Rio Salado Center LLC, property owner) located at 1290 North Scottsdale Road, Suite Nos. 120 – 122 in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP10020 Use permit to allow a teen dance hall with live indoor entertainment (live bands, DJ).

CONTINUED TO APRIL 20, 2010 HEARING OFFICER

- Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **ZENNER PROPERTY (PL100047/ABT10001/CE095675)** (Julie Scofield, Inspector; Benedictine Zenner, property owner) located at 1527 East El Parque Drive in the R-2, Multi-Family Residential District.

WITHDRAWN BY COT – CODE COMPLIANCE DEPARTMENT

3. Request by the **PIRAINO RESIDENCE (PL090281)** (Robert Klob/Robert Klob Designs Inc., applicant; Chris Piraino, property owner) located at 7736 South Willow Drive in the R1-10, Single Family Residential District for:

ZUP09121 Use permit to allow an accessory structure (RV garage) above fifteen (15) feet in height (actual structure height is 21 feet 4 inches).

VAR09010 Variance to reduce the south street side yard setback from fifteen (15) feet to ~~five (5)~~ **twelve (12)** feet. **MODIFIED BY HEARING OFFICER**

VAR09011 Variance to reduce the on-site driveway length from twenty (20) feet to ~~five (5)~~ **twelve (12)** feet. **MODIFIED BY HEARING OFFICER**

Mr. Robert Klob of Robert Klob Designs Inc. and Mr. Chris Piraino were present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued.

Mr. Klob described the scope and details of the project. Mr. Klob explained that Louis Way is a dead end street, and that there is ample parking on the existing lot to provide for any guests. He reviewed the dimensions of the proposed structure and the site plan of the lot.

Mr. Williams asked what the distance between the garage and the existing pool. It was determined that it was approximately 25 ft.

Mr. Williams asked what was unique about this lot that meets the criteria for a variance ? Mr. Klob responded that there they want to make sure that there is ample clearance between the structures.

Mr. Williams asked the applicant what would be parked in this garage. Mr. Klob responded that an RV and possibly vehicles may be parked inside the structure. Mr. Williams explained that, due to the reduced driveway length, there was concern that cars may be parked here and that they would obstruct the pedestrian pathway (i.e. block the sidewalk).

Mr. Williams asked the applicant and property owner if he understood that no cars may be parked in this shortened driveway; Mr. Piraino responded that he did understand this stipulation.

Mr. Williams noted that the use permit would be approved as requested, however both variances would be approved but modified to be consistent with the use permit standard of 20% reduction as follows:

VAR09010 Variance to reduce the south street side yard setback from fifteen (15) feet to ~~five (5)~~ **twelve (12)** feet. **MODIFIED BY HEARING OFFICER**

VAR09011 Variance to reduce the on-site driveway length from twenty (20) feet to ~~five (5)~~ **twelve (12)** feet. **MODIFIED BY HEARING OFFICER**

DECISION:

Mr. Williams approved PL090281/ZUP09121/VAR09010/VAR09011, as modified, subject to the following conditions:

1. Modify the street side yard setback for the structure to twelve (12) feet.
2. The new structure to complement the main dwelling in material, design and colors.
3. Obtain all necessary building clearances and permits.
4. **No parking is to be allowed in the shortened driveway for this new structure. ADDED BY HEARING OFFICER**

4. Request by **CLEARWIRE – SHALIMAR COUNTRY CLUB (PL100005)** (Rulon Anderson, applicant; Shalimar Country Club, property owner) located at 2000 East Golf Avenue in the AG, Agricultural District for:

ZUP10019 Use permit to allow a sixty-two foot (62') high monopole (monopine).

Mr. Rulon Anderson was present to represent this case.

Diana Kaminski gave an overview of this case and stated that some input had been received from neighbors (4 residents in the area in the form of phone calls and e-mails).

Mr. Anderson addressed Condition of Approval No. 4, explaining that the indication is that the trimming of trees is not allowed. The trimming of trees could be related to issues other than those imposed by Clearwire. Mr. Williams asked for staff input on this issue. Mr. Abrahamson responded that the condition does not relate to 'trimming' the trees, but rather 'topping' which would be removing the tops of the trees. It was agreed to remove the words 'or alteration' from this condition. The height of the monopine vs the height of the trees was discussed.

Mr. Anderson addressed Condition of Approval No. 5, explaining that it was not his responsibility to re-landscape the property. Clearwire does not have rights on the site regarding the property landscaping. Ms Kaminski explained that should the monopine damage the surrounding landscape, they would need to replace that landscape due to concern regarding the nearby office building. Mr. Abrahamson explained that although this may not have been a consistent condition of approval in the past, the conditions are based on field inspections pertinent to the specific property.

Discussion between Mr. Abrahamson and Mr. Williams was held regarding Condition of Approval No. 7 pertaining to the lighting requirement(s). Mr. Abrahamson explained that this was due to security concerns.

Mr. Anderson stated that he had not had this condition on this request or any other request here in Tempe or any other location/city. While he had no problem with the lighting request, he did not understand the need for the landscape condition. Clearwire does not affect any of the landscape on any of their sites. If there is missing or damaged landscaping, why would they be held liable for something they did not cause. What would happen if a tree or landscape material got damaged in a storm? It would not be replaced with a large tree of similar size, but only a 36 inch box tree that would take 15 to 20 years to grow to the height of the storm damaged tree.

Condition of Approval No. 7 was discussed. Mr. Abrahamson noted staff's strong recommendation that this condition be left intact as Clearwire would be erecting a walled enclosure to the adjacent office building located approximately 12 ft away allowing for the possibility of potential crime due to the resulting lack of visibility. Mr. Anderson stated that this issue was not addressed during site plan review.

Ms. Kaminski explained that during site plan review it was recommended that this Clearwire site be placed in a more visible location, as this is a narrow lot and the enclosure would be facing doors and windows of the office building. However, when the Clearwire application was received the project submittal was for the location indicated on this request, which had security concerns.

DECISION:

Mr. Williams approved PL100005/ZUP10019 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. The monopine shall be no greater than 62'-0" (sixty-two feet) (to the top of the pine branches and needles) as per plans submitted with this request.
3. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
4. All existing mature landscape is to be preserved and protected in place, topping or alteration of living trees for function or service of the monopine is prohibited. **MODIFIED BY HEARING OFFICER**

5. ~~Replace any dead or missing landscape along the length of the property; preserve a dense canopy along the southern property border.~~ **DELETED BY HEARING OFFICER**
6. The wireless devices shall be removed within 30 days of discontinuance of use.
7. The enclosure gates shall require lighting to meet five (5) foot candles at the gate and two (2) foot candle within a 15' radius.
8. Place emergency information placard with a weather resistant cover (lexan) to be visible from outside the equipment enclosure.

5. Request by the **KAVAZANJIAN RESIDENCE (PL100067)** (Kenny Martin/Martin Construction & Remodeling, applicant; Edward Kavazanjian, property owner) located at 1415 South Oakley Place in the R1-6, Single Family Residential District for:

VAR10003 Variance to reduce the north side yard setback from five feet (5') to three feet two inches (3'-2") for an existing garage/carport extension.

Mr. Kenny Martin of Martin Construction & Remodeling and Mr. Edward Kavazanjian were present to represent this case.

Shawn Daffara gave an overview of this case and stated that no further public input has been received since the staff report was issued. The property was first developed in 1955; the old ordinance allowed the 3 ft setback. The neighborhood meeting indicated that the majority of the neighbors were in favor of this request. The neighbor to the north had his concern(s) resolved.

Mr. Williams noted that this variance request was kind of a grandfathered case. The extension is consistent and in character with the neighborhood, Mr. Williams stated, however he was concerned with the structure being open and would add a condition of approval to that effect.

DECISION:

Mr. Williams approved PL100067/VAR10003 subject to the following conditions of approval:

1. The variance is valid for the plans as approved by the Hearing Officer.
2. The carport shall complement the existing residence in form, color and material.
3. Obtain all necessary clearances from the Building Safety Division.
4. **Carport shall remain open and shall not be enclosed in any manner. ADDED BY HEARING OFFICER**

6. Request by the **FINAL ROUND (PL100066)** (Jesse Feller, applicant; Presson Corporation, property owner) located at 5030 South Mill Avenue in the GID, General Industrial District for:

ZUP10021 Use permit to allow a bar with a Series 6 liquor license.

Mr. Jesse Feller was present to represent this case.

Sherri Lesser gave an overview of this case and stated that no further public input has been received since the staff report was issued. Staff is requesting that updated parking information be provided as per Condition of Approval No. 5 and that this would be approved administratively as long as it is consistent with the City of Tempe parking-by-demand model.

DECISION:

Mr. Williams approved PL100066/ZUP10021 subject to the following conditions of approval:

1. The use permit is valid for Final Round and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. Obtain all necessary clearances from the Building Safety Division.
3. Any intensification or expansion of use would require the use permit to be reheard by the Hearing Officer.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. Update the data for parking file for this building prior to the use permit becoming effective. Provide information within 14 days or by 4/20/10.
6. Any new business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.

7. **Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 5, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."**

Request by **CAFE ISTANBUL (PL080075)** (Mahmoud Ayashe, applicant; City of Tempe, property owner) located at 1310 East Apache Boulevard, Suite No. 204, in the CSS, Commercial Shopping and Services District for:

ZUP08085 Use permit to allow a hookah lounge/tobacco retailer.
(Use permit was approved by the Hearing Officer at the June 3, 2008 HO hearing.)

Shawn Daffara gave an overview of this case and stated that no further public input has been received since the staff report was issued.

Jeff Tamulevich, Code Compliance Administrator, gave an overview of this case, noting that COA No. 5 had never been complied with. City staff held an administrative hearing on February 4, 2010 to work with the business owner and/or their representatives to resolve this issue.

In response to a question from Mr. Williams, Mr. Tamulevich confirmed that the Building Permit was still pending and not issue.

Mr. Ayashe stated that he understood the case and had nothing to say.. Mr. Williams explained that the rules and regulations of the City of Tempe were required to be met and that he was inclined to revoke the use permit due to the lack of progress on the part of the business owner.

Mr. Williams stated that based on the information provided today, this use permit was revoked. He asked staff what procedure(s) this business owner would need to follow . . would he need to re-apply for a new use permit and subsequent building permit ?

Mr. Abrahamson explained that before they would need to re-apply the business owner could actually appeal the HO decision to the Development Review Commission in writing within 14 days (by April 20, 2010). He would strongly suggest that the business owner progress on the building permit issues so he could indicate to the DRC that progress had been made.

Mr. Kahlil Abulaban, business owner of Harem Nights a hookah lounge located at 1630 East Apache Boulevard, spoke on behalf of Mr. Ayashe. He stated that Mr. Ayashe has made every effort to comply with the City of Tempe requirements. He has hired a professional engineer and architect, and worked with Michele Lorange (Building Safety) as well as Jeff Tamulevich (Code Compliance) back and forth for past 4 to 8 weeks. It was his understanding that as long as a business owner was working to resolve outstanding issues, this would be taken in account. On behalf of his competitor, Mr. Abulaban asked that Mr. Ayashe be granted a continuance as he is working on the paperwork and issues to be resolved. There were issues regarding the location being moved from upstairs to downstairs which delayed the resolution of the outstanding issues. The last paperwork was submitted 7 or 8 days ago and is still pending review.

At the request of Mr. Williams, Mr. Daffara provided additional background history on this case. When the original use permit was approved on June 3, 2008, the hookah lounge was intended to be in the upstairs location, however after investigation by Building Safety and fire code issues, the business owner determined that it might be cheaper to have the hookah lounge on the first floor of this building. The City of Tempe is the landlord. Several meetings have been held related to the tenant improvement plans. Mr. Ayashe was advised that he needed to move forward with the plans for the upstairs hookah lounge as submitted in his original request and resolve building code violations. Several months of meetings were held between the City of Tempe (as landlord) and Mr. Ayashe. On March 4, 2010, Mr. Ayashe was advised that he needed to move forward with the original upstairs location and resolve the outstanding building code violations. Two weeks prior to March 4th, Mr. Ayashe had been given clear direction not to pursue moving the hookah lounge to the alternate downstairs location, Mr. Daffara stated, but to proceed with the upstairs location.

Mr. Abulaban returned to the podium to state that as of February 2010, that, in his opinion, the checklist for items to be resolved was 99% done.

Mr. Williams noted that the lack of progress was a real concern; that 18 to 20 months have gone by since Mr. Ayashe said the would have the items required by the City resolved.

Mr. Abulaban stated that Mr. Ayashe was in the process of getting the whole building completed in the past 18 to 20 months.

Mr. Abrahamson explained the Building Code issues of exiting from the upstairs and that it had been over 60 days since Mr. Ayashe had been notified the unresolved issues for the upstairs needed to be brought to completion. The circumstance is that the hookah lounge has been located upstairs for over two years and this applicant has not meet the specified condition(s) of approval. Many discussions have been held with this applicant with the exiting and HVAC issues.

Ms. Lorange noted, in response to a question from Mr. Williams, that the due date for the second plan review modifications is scheduled to be completed by April 8, 2010. Should the plan review be approved, the Building Permit can then be issued. There are tenant improvements and HVAC issues that will need to be accomplished after the approval of the Building Permit, which can take up to 30 days, Ms. Lorange explained, as far as contractors and equipment.

Mr. Williams noted that his main concern is to be fair to the business owner. He asked the Mr. Ayashe what length of time would be needed to complete the required improvements. Mr. Ayashe, with Mr. Abulaban's assistance, responded 60 days.

Mr. Williams stated that based on today's discussion, this request for revocation is being continued for 60 days until the June 1, 2010 Hearing Officer's hearing. At that time, all required improvements should be completed. He asked if the applicant, Mr. Ayashe understood that stipulation. Mr. Ayashe stated that he did.

DECISION:

Mr. Williams continued the revocation proceedings for the use permit for PL080075/ZUP08085 for a period of sixty (60) days (until the June 1, 2010 Hearing Officer).

8. **Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."**

Request by **SUNSTOP PLAZA – URBAN CAFE (PL080094)** (Mohamed Elghalayini, applicant; Royal West Investments LLC, property owner) located at 1212 East Apache Boulevard, Suite No. 102, in the CSS, Commercial Shopping and Services District for:

ZUP08063 Use permit to allow a hookah lounge/tobacco retailer.
(Use permit was approved by the Hearing Officer at the May 6, 2008 HO hearing.)

Shawn Daffara gave an overview of this case and stated that no further public input has been received since the staff report was issued. He noted that a Building Permit had been issued to this applicant on August 20, 2009. In conversations with Michele Lorange, Building Safety Inspector, it is his understanding that the business owner is really close to receiving their final inspection. Based on this information, Mr. Daffara requested that a 30 day continue to this revocation request be given.

Jeff Tamulevich, Code Compliance Administrator, gave an overview of this case, stating that Mr. Daffara had pretty well summed up the current status of this case. Condition of Approval No. 4 had never been complied with. City staff held an administrative hearing on February 4, 2010 to work with the business owner and/or their representatives to resolve this issue.

Mr. Williams asked Mr. Tamulevich what his recommended action would be; Mr. Tamulevich responded that it would be for a 30 day continuance for this revocation request.

Ms. Lorange stated that in a conversation with the business owner today, he indicated that the property would be ready for a final inspection tomorrow.

Mr. Elghalayini was present. He stated that he had no questions.

DECISION:

Mr. Williams continued the request for the revocation for the use permit for PL080094/ZUP08063 to the April 20, 2010 Hearing Officer hearing.

9. **Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."**

Request by **MEMO'S CAFE (PL080109)** (Ramez Rabata/Memos Cafe, applicant; Red Mountain Retail Group, property owner) located at 1845 East Broadway Road, Suite No. 9, in the CSS, Commercial Shopping and Services District for:

ZUP08045 Use permit to allow a hookah lounge/tobacco retailer.
(Use permit was approved by the Hearing Officer at the April 15, 2008 HO hearing.)

Shawn Daffara gave an overview of this case and stated that no further public input has been received since the staff report was issued. Initial application for a Building Permit was made on May 14, 2009. Due to lack of progress this Building Permit application is due to expire due to lack of progress.

Ms. Lorance stated that the application for this Building Permit is due to expire on May 14, 2010 if it is not approved. Redline comments were last issued on September 17, 2009. Presently it is going thru its 3rd resubmittal; if it is not approved this time, the business owner will be subjected to starting the process over again.

Jeff Tamulevich, Code Compliance Administrator, gave an overview of this case noting that Condition of Approval No. 4 had never been complied with. City staff held an administrative hearing on February 5, 2010 to work with the business owner and/or their representatives to resolve this issue, and at that time they were given 30 days to bring the property into compliance. To date the building plans remain unapproved, and the business owner is in violation.

Mr. Eric Nelson, representing the property owner, stated that they would ensure that the tenant adheres to the requirement(s) within a specified period of time. He spoke with the tenant who informed him that they would not be able to meet the March 14, 2010 target date and that it would be 3 wks before they could finish their submittal with an additional 40 days to complete the work necessary. Mr. Nelson asked for a minimum 30 day continuance of this revocation process in order to make appreciable progress. A new architectural/engineering team has been hired to ascertain that the next submittal will meet City requirements if a continuance is granted.

Mr. Williams asked why 18 to 20 months have passed without appreciable progress. Mr. Nelson responded that it was his understanding that it was due to problems between the architect and tenant. He noted that he felt that it is his role to help this tenant to resolve these issues in a timely manner.

Mr. Williams noted that he appreciated Mr. Nelson presence at today's hearing however the applicant must be held accountable and that other applicants in the same situation have brought their properties into near compliance. He stated that he does not see imminent improvement on this particular case and that he is revoking this use permit.

DECISION:

Mr. Williams revoked the use permit for PL080109/ZUP08045.

10. **Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."**

Request by **KING TUT CAFE – MISHA'S SHEESHAS (PL080122)** (Kareem Kassel, applicant; Kassel Corporation, property owner) located at 1125 East Apache Boulevard, in the CSS, Commercial Shopping and Services District for:

ZUP08064 Use permit to allow a hookah lounge/tobacco retailer.
(Use permit was approved by the Hearing Officer at the May 6, 2008 HO hearing.)

Shawn Daffara gave an overview of this case and stated that no further public input has been received since the staff report was issued. Plans were submitted to Building Safety for plan review on February 27, 2009. Since that time the applicant has been going thru the inspection/approval process. They have been making progress over the past 6 months. The property has 4 corrections to be made; at this time, Mr. Daffara stated that 2 of those corrections remain outstanding.

Ms. Lorange stated that as of February 8, 2010 there were 4 outstanding code violations. Plans were resubmitted on March 30, 2010 and final review is scheduled to be complete on April 7, 2010.

Jeff Tamulevich, Code Compliance Administrator, gave an overview of this case noting that Condition of Approval No. 4 had never been complied with. City staff held an administrative hearing on February 5, 2010 to work with the business owner and/or their representatives to resolve this issue, and at that time they were given 30 days to bring the property into compliance. To date the building plans remain unapproved, and the business owner is in violation.

Ms. Kassel spoke of her efforts to bring the property into compliance.

Mr. Williams noted that improvements/progress had been made. He asked Ms. Kassel if 14 days was long enough to complete the necessary improvements and bring the property into compliance. She responded that 30 days would be appreciated.

DECISION:

Mr. Williams continued revocation proceedings for the use permit for PL080122/ZUP08064 for 30 days. This case will be reheard at the May 19, 2010 Hearing Officer hearing.

The next Hearing Officer public hearing will be held on **Tuesday, April 20, 2010.**

There being no further business the public hearing adjourned at 3:12 PM.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Planning & Zoning Coordinator
for David Williams, Hearing Officer

SA:dm